

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.4978 of 1995

Date of Decision: 21.05.2015

Satyavarat Arya

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. R.K. Malik, Sr. Advocate
with Mr. Ramandeep Singh, Advocate
for the petitioner.
Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

The present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* quashing the impugned order dated 02.03.1995, whereby, the petitioner was compulsorily retired from service.

The petitioner was initially appointed as Junior Engineer and thereafter, he was promoted as Sub-Divisional Engineer in the month of November, 1981. Ultimately, he was compulsorily retired from service vide order dated 02.03.1995. The order dated 02.03.1995, retiring the petitioner compulsorily from service is the subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that during whole service career of the petitioner, no adverse remarks were ever conveyed to him except the report for the year 1986-87, wherein also, the remarks were

only of advisory nature. Similarly, the Annual Confidential Reports of the year 1988-89 as well as of 1992-93 were also conveyed to the petitioner. Learned counsel also submits that the average reports of the petitioner have been considered as adverse, whereas, the same cannot be considered as negative. He further submits that the integrity of the petitioner was never found to be doubtful. He cannot be said to be dead wood and order of compulsory retirement could not be said to be in the public interest. Learned counsel also submits that some of the Annual Confidential Reports of the petitioner were not even written during the period of last ten years and those cannot be considered as adverse and as such, by considering the total number of Annual Confidential Report, still 70% reports of the petitioner are "good".

Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court in case ***Baikuntha Nath Das vs Chief District Medical Officer, Baripada 1992(2) SCT 92*** as well as judgment of this Court in case ***Ram Kishan vs State of Haryana 1994(3) SCT 609*** in support of his contentions.

Learned State counsel submits that the respondent-State has an absolute right to retire a Government employee pre-maturely in public interest in view of Rule 5.32-A(C) of Punjab Civil Service Rules Vol.-II (here-in-after referred to as "the Punjab Civil Service Rules) as amended vide Government notification dated 12.07.1974. Learned counsel also submits that certain guidelines were issued in ***Baikuntha Nath Das's*** case (supra) and compulsory retirement has been stated to be the subjective satisfaction of the Government. He further submits that in case, the Government employee does not have 70% good reports during last ten years then he is retired compulsorily. The service record of the last ten years from 1983-84 to 1992-93 was taken into consideration. During this

period, not only the warning was given to the petitioner but other remarks were also reflected in his Annual Confidential Report and the adverse remarks for the year 1964-65, 1965-66, 1986-87, 1988-89 and 1992-93 were also conveyed to him.

Heard the arguments of learned counsel for the parties and have also gone through the impugned order.

Admittedly, the petitioner retired compulsorily vide order dated 02.03.1995 as per provisions contained in the Punjab Civil Service Rules. It is also not disputed that the petitioner was given three months' salary and allowances in lieu of notice of three months as required under the Punjab Civil Service Rules. The details of the ACR of the petitioner from 1976 to 1992 (reiterated from Annexure P-5) are as under :-

<i>Sr. No.</i>	<i>Period of report</i>	<i>Grading</i>	<i>Adverse remarks about integrity, if any.</i>	<i>Remarks</i>
1	1976-77	Very good	----	----
2	1977-78	Good	----	----
3	1.4.78 to 30.6.78	Not available	----	----
4	<u>1.7.78 to 31.3.79</u>	Very good	----	----
5	<u>1979-80 :</u>	Very Good	----	----
	<u>1.4.79 to 28.8.79</u>			
	<u>29.8.79 to 31.3.80</u>			
6	<u>1980-81</u>	Good	----	----
7	1981-82	Good	----	----
	<u>12.5.81 to 21.1.82</u>			
8	28.1.82 to 31.3.82	Good	----	----
9	1982-83	Good	----	----
10	<u>1983-84 :</u>	Good	---	---
	<u>1.4.83 to 31.8.83</u>			
	<u>1.9.83 to 31.3.84</u>			
11	<u>1984-85</u>	Good	----	---
12	<u>1985-86</u>	Good	----	----

13	1986-87	Good	-	Adverse remarks conveyed vide No.712/CR dt. 3.3.88 but no representation received.
14	<u>1987-88</u> 24.4.87 to 31.7.87	Average	----	Adverse remarks conveyed vide No.95/CR dt. 10.1.89.
	24.8.87 to 31.3.88	Average	----	-----
15	1988-89	Average	----	Adverse remarks conveyed vide No.3225/CR dt. 29.9.89 but no representation received.
16	15.5.89 to 7.8.89	Not written (Period less than 3 months)	----	-----
	8.8.89 to 20.1.90	Not written (on leave)	-----	-----
17	1990-91	Good	-----	----
18	<u>1991-92 :</u>			
	1.4.91 to 12.8.91	Not written (on leave)	----	----
	13.8.91 to 31.3.92	Good	----	-----

From perusal of report as mentioned above, it appears that three reports of the petitioner are **average**, thirteen reports are **good**, three reports are **very good** and the remaining report(s) have not been recorded.

The only argument which has been raised by learned senior arguing counsel for the petitioner is that the overall performance of the petitioner during the period of ten years is **good/very good** and **average** report cannot be considered as an **adverse** report. He also submits that there are 70% good reports of the petitioner and hence, he cannot be retired compulsorily as his integrity was not found to be doubtful.

As per ratio of judgment in **Ram Kishan's** case (supra), an

employee having ordinary report, may not be considered as extra-ordinary but he cannot be equated with an employee who has become unfit to be retained in public service or whose efficiency has impaired to such a degree which warrants his home sending before reaching the age of superannuation.

The following principles were laid in judgment of Hon'ble the Apex Court in **Baikuntha Nath Das's** case (supra), which are as under :-

- (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
- (iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls,

both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.”

Undisputedly, the State Government has an absolute right to retire the petitioner in public interest but such opinion is to be subjective, which would be based on performance of the petitioner during his entire service record and especially the record of the last ten years before the date of passing of order of compulsory retirement. It is not disputed that from perusal of service record of the petitioner, his integrity was not found to be doubtful.

In view of principles laid down in **Baikuntha Nath Das's** case (supra), the only interference is permissible only on the grounds as mentioned in (iii) above.

In **State of U.P and another v. Abhai Kishore Masta 1995(1) SCC 336**, Hon'ble the Apex Court relied on its earlier decision in **Baikuntha Nath Dass** case (supra), wherein, it was observed that it cannot be said as a matter of law nor can it be said as an invariable rule, that any and every order of compulsory retirement during the pendency of disciplinary proceedings is necessarily penal. It may be or it may be not. It is a matter to be decided on a verification of the relevant record or the material on which the order is based.

Similarly, in judgment of ***Madan Mohan Choudhary v. The State of Bihar and others 1999(1) JT (SC) 459***, Hon'ble the Apex Court was considering the order of compulsory retirement of a member of superior judicial service in the State of Bihar as a writ petition was filed by him challenging the order of compulsory retirement before the Full Court of the High Court. The High Court on the judicial side refused to interfere and as such, the petition was dismissed. The appellant came in appeal before Hon'ble the Apex Court. It was found that while on various earlier occasions, remarks were given by the High Court but there were no entries in the character roll of the appellant for the years 1991-92, 1992-93 and 1993-94. The entries for these years were recorded at one time simultaneously and the appellant was categorized as "C" Grade Officer. It was held by Hon'ble the Apex Court that it was a case where there was no material on the basis of which an opinion could have been reasonably formed that it would be in the public interest to retire the appellant from service prematurely. It was also held that the High Court while exercising its power of control over the subordinate judiciary is under an constitutional obligation to guide and protect judicial officers from being harassed or annoyed by trifling complaints relating to judicial orders so that the officers may discharge their duties honestly and independently.

Even though the State Government has an absolute right to retire a government servant in public interest but such opinion is to be formed on the basis of material available on the basis of entire service record for the last ten years. Undisputedly, the average reports of the petitioner were not conveyed to him and as such, he was not having any chance to improve his working. Although, some warnings were given to the petitioner with regard to his working but nothing has been said regarding his integrity in any of his Annual Confidential Report.

The Division Bench of this Court in ***Faqir Chand Aggarwal, Executive Engineer vs State of Haryana and others, CWP No.1984 of 1987***, decided on **21.01.1988** has taken a view that an employee, who lacks in integrity cannot be evaluated as an average Officer and in such case, the Officer has to be graded as 'Below Average.'

The petitioner, in the present case, has been granted three average reports during the last ten years and as such, it cannot justify the forming of an opinion for the petitioner to have outlived his utility as chopped off as deadwood.

In view of the facts as mentioned above, it is apparent that the petitioner has been retired compulsorily without forming any opinion regarding his assessment on the basis of Annual Confidential Reports. Simply on the basis of average reports, which have not even been conveyed to the petitioner, an opinion cannot be formed that the petitioner was outlived his utility. Moreover, nothing concrete is available on record to show that it was in public interest that he should have been compulsorily retired.

Accordingly, there is a merit in the submissions made by learned counsel for the petitioner and the present petition deserves to be allowed. The impugned order dated 02.03.1995 is set aside. The petitioner shall be entitled for all the consequential benefits as an employee of the Haryana Government.

Ordered accordingly.

21.05.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE